

These comments are being submitted on behalf of the National Grants Management Association

First off, we would like to express our gratitude for the opportunity to submit these comments. A workgroup was formed that engaged with our members and overall response was very positive. We want to thank the staff at OMB for agreeing to provide presentations with Q & A sessions as the presentations were very helpful for our members. We also appreciate the provided red line version of the proposed changes to help facilitate our group review of the document.

We have provided comments, as well as questions and items for consideration:

Proposed Uniform Guidance Revisions Comments and Questions:

1. Preamble: Page 10 & 11 – Use of common form to replace standard form – concern that not requiring the use of standard forms is a move away from streamlining. In states that are using uniform budget and reporting documents, they have found significant savings for Pass-through entities and their subrecipients. We like the requirement that more than one department must use the common form; however, we would recommend determining what changes could be allowed and added to the standard form instead of allowing a completely different form. For example, the State of Illinois determined that having a standard form for budgeting and reporting saved over 350,000 labor hours by requiring uniform forms.
2. 200.1 Award Date Definitions: Period of Performance, Budget Period, and Renewal. In the case of an award where the period of performance for the initial award was May 1, 2018 to April 30, 2019, and the renewal for the current budget period is for May 1, 2019 to April 30, 2020, we wondered what would be the period of performance listed on the award letter at the time of the initial award and at the time of the renewal? The concern is that the definition says each renewal must have a distinct period of performance. The definitions for budget period and renewal do not include any reference to dates.
3. 200.1 Budget Period – May be helpful to explicitly say in the definition that budget periods have start dates and end dates similar to what is stated in the period of performance. Some federal agencies allow recipients to keep the prior budget period open and spend on two open budget periods at the same time.
 - a. How do you anticipate this definition will impact this practice?
 - b. Is the expectation that recipients will be consistently required to make a carry forward request for all remaining funds for the prior budget period as specified in 200.308(e)(3)?
4. 200.1 Oversight Agency for Audit – What is the rationale for adding the second sentence regarding direct funding less than 25%? Note that this language is repeated in 200.513 Federal Agency Responsibilities.
 - a. Why wouldn't a federal cognizant agency have been assigned if they receive direct federal funding?
 - b. Isn't it the same determination methodology regardless of percent?
 - c. When a pass-through agency provides a non-federal entity that also receives direct federal funding, would the PTE be required to work with the federal awarding agency prior to issuing a Management Decision Letter?
5. 200.1 Subsidiary – Appreciate the inclusion of subsidiary definition and the insight provided through enhanced SAM registration. The definition references FAR 52.209-10. Is this only for definitional purposes or is it the intent to prohibit contracting with inverted domestic corporations and their subsidiaries?
6. 200.1 Definitions for micro-purchases and simple acquisition threshold can be simplified:
 - a. Micro-purchase means a purchase of property or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see §200.319). The micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the Federal Acquisition Regulation (FAR) at 48 CFR subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency.
 - b. Simplified acquisition threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using small purchase methods (see §200.319). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. While the ceiling for the simplified acquisition threshold for procurement activities administered under Federal awards is set by the Federal Acquisition Regulation at 48 CFR subpart 2.1., the non-Federal entity is responsible for determining an appropriate simplified acquisition threshold for their entity based on internal controls, an evaluation of risk and its documented procurement procedures. States, IHEs and local governments should determine if local government laws on purchasing apply.

7. 200.110(b) Effective/Applicability Date – Existing negotiated indirect cost rates will remain in place until they are re-negotiated. The effective date of changes to indirect cost rates must be based upon the date that a newly renegotiated rate goes into effect for a specific non-Federal entity’s fiscal year. We like this change and allowing the use of the De Minimis Rate for all entities regardless of whether the entity has previously negotiated an indirect cost rate. We have the additional items for consideration to further ease the administrative burden:
 - a. Propose allowing the base for the De Minimis rate to include salaries and wages, this would be an election to use either the MTDC or salaries and wages.
 - i. PTEs have found many smaller Non-federal entities do not use the de minimis rate due to the complexity of calculating the MTDC base
 - ii. Allowing the election of either MTDC or Salaries and Wages would further reduce the administrative time to calculate the base on the subrecipient side, as well as the verification by the pass-through entity time to ensure the base was properly calculated
 - iii. Use of salaries and wages as a base would lower the amount of indirect costs claimed but would offset by significantly reducing the administrative time to streamline the process, therefore we believe it should remain at 10%. In addition, we believe approving a higher percentage (10%) for salaries and wages base would cause confusion for applying either MTDC and Salaries and Wages.
 - iv. We believe adding a Salaries and Wages base would also result in smaller Non-federal entities claiming some of their administrative costs while reducing the administrative burden.
 - b. If the rate based on the non-federal entity FY falls in the middle of the award period, is the federal or PTE required to honor the new rate in the middle of the period of performance? For example, the entire amount of the award has been obligated and no funds available to honor the rate during the period of performance. Is the acceptance of a new rate based on availability of funds if the new rate is effective during the period of performance?
8. 200.202 Program Planning and Design, 200.210 Federal Award Performance Goals, and 200.301 Performance Measurement – We recognize that the federal government is ramping up in this area; however, UGG is only updated once every five years. Given this, would like to have the focus on performance strengthened in these sections. To effectively pivot from compliance to performance these sections need more teeth. For example, in Performance Measurement 200.301, we would like it to say the Federal awarding agency must provide recipients with clear performance goals, indicators, and milestones. Should is not good enough. In the same section, several of the current “must” requirements were changed to “should” which weaken rather than strengthen the move toward performance. Appendix I to Part 200 includes language requiring federal agencies (must) to include goals and objectives in NOFO; however, it only says federal agencies could include information on expected performance indicators, targets, baseline data, and data collection.
9. 200.206 FAPIIS -- Federal Awardee Performance and Integrity Information System (FAPIIS)
 - a. Based on our review of proposed revisions, there is no requirement for Pass-through Entities (PTEs) to require/obtain information for this system. We believe that PTEs should have access to enter information into FAPIIS and require review by the PTE as part of the risk assessment process.
10. 200.208 Specific Conditions - Preamble on pages 11 & 12, state that “proposed changes to 200.207 Specific Conditions allow federal awarding agencies to apply less restrictive conditions based on risk and require federal awarding agencies to ensure that specific federal award conditions are consistent with program design and include clear performance expectations of the recipients.”
 - a. This is included in 200.102(b) but not included in the new section 200.208 Specific Conditions
11. 200.211 (b) General federal award information - The Federal awarding agency must include the following general Federal award information in each Federal award. (8) Total amount of funds obligated indicates the language is not clear if it is for a budget period or project period. To effectively manage at the state level, in addition to providing the “Amount of funds obligated this action” states need “Amount of funds obligated in current budget period” (which may be different than the former due to funding increments) and “Amount of funds obligated for the performance period” (see notes on performance period definition). Also, (9) Total Approved Cost Sharing or Matching – It would be helpful for states to have both budget period match requirements and performance period match requirements as needed to be able to speak to both in the context of the state budget process.
12. 200.211(e) – We like the Insertion of language regarding references to non-binding guidance documents
13. 200.301 As appropriate and in accordance with above mentioned information collections, the Federal awarding agency **must should** require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned **standard common** information collections, and when applicable, recipients **must should** also provide cost information to demonstrate cost effective practices (e.g., through unit cost data).
 - a. If the focus is on performance and cost-effective approaches, why change the must to should?
 - b. How are performance based grants going to be treated in the Compliance Supplement?

14. 200.309 – This cite was removed. The definition of period of performance (previously 200.77) removed part of the definition that included the pass-through entity. Was the intent to remove the pass-through entity's authority to approve pre-award costs for subrecipients?
15. 200.312(c) – We like the requirement for a common form for equipment.
16. 200.319 Methods of procurement to be followed. We do like the ability to lessen administrative requirements for low risk recipients and subrecipients however we have the following concerns:
- a. We find these revisions to be very confusing and are concerned it will confuse our subrecipients.
 - b. Why is review and approval required for the micro-purchase threshold but not the simple acquisition threshold, which the Non-federal Entity may set at a level lower than FAR?
 - c. Does it make sense to ask entities to define both in one request?
 - d. Why isn't the review completed by the cognizant agency for audit, instead of the cognizant agency for indirect costs given that their defined responsibility and familiarity with administrative requirements under single audits?
 - e. Formal procurement requires public advertising - what does this mean?
 - f. Is posting on a central or agency website enough?
 - g. 200.1 Simple Acquisition Threshold: Recommend rewording for clarity.
 1. "Simplified acquisition threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using small purchase methods (see §200.319).
 2. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. While the ceiling for the simplified acquisition threshold for procurement activities administered under Federal awards is set by the Federal Acquisition Regulation at 48 CFR subpart 2.1., the non-Federal entity is responsible for determining an appropriate simplified acquisition threshold for their entity based on internal controls, an evaluation of risk and its documented procurement procedures. States, IHEs and local governments should determine if local government laws on purchasing apply."
17. 200.319(1)(iv) Cognizant agency for indirect cost evaluation of higher threshold requests are performed to determine if an entity is low risk (see §200.520 Criteria for a low-risk auditee) and must include at a minimum a review of the entity's audit findings and any appropriate internal institutional risk assessments. We like and agree with this proposed revision but have the following concerns:
- a. Must the non-federal entity requesting a higher threshold be a low-risk auditee to qualify? We are concerned requiring the non-federal entity to qualify as a "low risk auditee" might cause unintended consequences. We are concerned this wording would result in not performing a risk assessment if the non-federal entity was not a low risk auditee. This approach would increase the pressure of auditees place on their audit firms not to report findings in Single Audit, to continue to lessen their relief of administrative requirements for procurements. This could increase the likelihood of substandard audits to be issued, which will significantly reduce the reliance that can be placed on Single audits.
 - b. We recommend, qualifying as a low risk auditee as one of many considerations in the assessment of risk of procurement, but would not disqualify the entity on this element of risk assessment.
 - c. Is this also a requirement of the PTE if the non-federal entity does not receive direct federal funding?
18. 200.328 Monitoring and reporting program performance – we like and agree with this proposed revision, but consider adding:
- a. (b)(1) Consider extending the due date of periodic financial reporting (quarterly or semiannual reports), as with close out, the same issue applies to periodic financial and performance which is heavily relied upon for monitoring purpose during the period of performance.
19. 200.331 Requirements for pass through entities.
- a. (a)(4)(ii) We like the concept of allowing an indirect cost rate negotiated by one pass-through entity to be accepted by other pass-through entities to further reduce the administrative burden, however we have the following concerns:
 - i. For a PTE to rely on a rate negotiated by a different PTE, what information would be required to determine that the requirements under this part were followed?
 - ii. What information is the PTE who negotiated the rate with the non-federal entity required to provide to a different PTE?
 - b. (d)(4) PTE is only responsible for findings related to subaward, we agree with this direction however, we believe this needs to include clarification on the systemic issues, for example – some systemic issues directly impact subaward such as weaknesses in internal controls over financial reporting will impact program reporting. Was the intent to clarify that the PTE is not responsible for the audit findings for specific federal requirements of awards not administered by the Pass-Through Entity

20. 200.339 Termination

- a. Should there be a requirement for a specific timeframe for long-term goals and their measurement? E.g. an environmental program where the performance will require years to measure?
- b. 200.414(h) – Does this provision include rates negotiated by PTEs? Let's work to define what should be uploaded on site, including:
- c. Include rate letter PTE's that negotiated the rate, must use their letterhead and include contact information
- d. Require a paragraph indicating the methodology used in negotiating the rate. For example – followed the U.S. Department of Health and Human Services Indirect Cost Rate review manual.
- e. Include requiring the narrative of the Indirect Cost Rate Allocation Methodology used when negotiating the rate, to assist other PTE in determining the indirect cost rate was followed in the application.

21. 200.343 9(a) we like the addition of language regarding subrecipient responsibilities and timeframes and (g) change to "must" federal agency must promptly complete all closeout actions.

22. 200.414(h) All rate agreements from non-Federal entities must be available publicly on an OMB Designated Federal website. We like this proposed change and believe this would significantly reduce the administrative burden on recipients, but have items for further consideration:

- a. Assuming this also includes pass-through entities negotiated rates, what type of information would be included on the website:
 - i. For a rate negotiated by a PTE, the indirect cost rate must be issued on the entity's letterhead and include contact information
 - ii. The PTE negotiating a rate must include information on how the rate was negotiated, for example – This rate was negotiated using the U.S. Department of Health and Human Services, Program Support Center, Cost Allocation Services guidance
 - iii. Consider requiring the cost allocation methodology narrative is also provided to ensure that non-federal entities are following the negotiated methodology when applying the negotiated indirect cost rate.

Requests:

1. 200.211 (c) Could there be a single website where all federal agency award terms and conditions are posted? This would save time for state agencies who receive awards from multiple agencies as well as monitors and auditors who reference these documents.
2. What is the estimated timeframe for the implementation of the revisions?
 - a. What is the timing of the federal agency adoption?
 - b. Will there be a grace period for non-federal entities to implement?
 - c. Would suggest Federal agencies and non-federal entities are granted an equal amount of time for implementation.
3. Frequently Asked Questions (FAQs):
 - a. If an item from the FAQs is not included as a revision to UG, will the item be struck through and null? If not, will OMB address the authority, if any, that the remaining FAQs have once all others have been incorporated as a revision to UG?